

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARRIN LaPINE,

Plaintiff,

v.

JAMES ATTERBERRY, *et al.*,

Defendants.

Case No. 1:06-CV-647

Hon. Richard Alan Enslen

ORDER

This matter is before the Court on Plaintiff Darrin LaPine's Motion for Reconsideration of the Court's December 11, 2006 Opinion and Judgment adopting the Report and Recommendation ("Report") of United States Magistrate Judge Ellen S. Carmody, dismissing Plaintiff's Complaint for failure to state a claim. Under Rule 7.4(a), Plaintiff must demonstrate that the Court's Order suffers from a palpable defect, and must "also show that a different disposition of the case must result from a correction thereof." W.D. MICH. LCivR 7.4(a). The Court also construes this as a Motion for Relief from Judgment pursuant to Rule 60(b)(1), for reason of mistake, inadvertence, surprise, or excusable neglect. FED. R. CIV. P. 60(b)(1).

Plaintiff filed a Notice of Appeal to the Sixth Circuit Court of Appeals on January 1, 2007, after filing this Motion for Reconsideration. In accordance with its letter of January 22, 2007, the Sixth Circuit is holding the appeal in abeyance under Fed. R. App. P. 4(a)(4), as it was noted this Motion had yet to be decided. This Court retains jurisdiction to determine a pending Rule 60(b) Motion, and the notice of appeal is held in abeyance pending ruling. *Post v. Bradshaw*, 422 F.3d 419, 422 (6th Cir. 2005); *see also* FED. R. APP. P. 4(a)(4) advisory committee's notes to 1993

Amendment (“a notice of appeal filed before the disposition of a specified post-trial motion will become effective upon disposition of the motion.”)

Upon review, Plaintiff has failed to show that the Court’s Order suffered from any palpable defect or that a different disposition must result. Therefore, where the Court finds no evidence that supports a different disposition from Judge Carmody’s Report, Plaintiff’s Motion will be denied. Accordingly,

IT IS HEREBY ORDERED that Plaintiff Darrin LaPine’s Motion for Reconsideration (Dkt. No. 37) is **DENIED**.

Dated in Kalamazoo, MI:
January 31, 2007

/s/Richard Alan Enslin
Richard Alan Enslin
Senior United States District Judge